

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Janice M. Winnett

v.

Civil No. 13-cv-103-JD

JP Morgan Chase Bank, N.A.
and Federal National
Mortgage Association

O R D E R

Janice M. Winnett, who is proceeding pro se, filed a petition in state court seeking a temporary restraining order and an injunction to prevent JPMorgan Chase Bank, N.A. ("JPMorgan") and Federal National Mortgage Association ("FNMA") from conducting a foreclosure sale of her home. In state court, Winnett was granted an ex parte temporary restraining order on February 25, 2013, to prevent a foreclosure sale of her home, and the matter was scheduled for a hearing on March 7, 2013. FNMA and JPMorgan removed the action to this court on March 6, 2013.

FNMA moves to dismiss Winnett's claims.¹ In response, Winnett filed an objection to the motion and a motion for leave to file an amended complaint. The motion for leave to amend has been granted.

¹Although FNMA and JPMorgan are both defendants, only FNMA moved to dismiss.

A properly filed amended complaint supersedes the original complaint, and "[t]hereafter the earlier complaint is a dead letter and no longer performs any function in the case."

Connectu LLC v. Zuckerberg, 347 F.3d 82, 91 (1st Cir. 2008) (internal citations and quotation marks omitted); Kolling v. Am. Power Conversion Corp., 347 F.3d 11, 16 (1st Cir. 2003). As a result, the motion to dismiss the original complaint is moot. See, e.g., Boston Granite Exchange, Inc. v. Greater Boston Granite, LLC, 2012 WL 3776449, at *6 (D. Mass. Aug. 29, 2012); Applied Underwriters v. Combine Mgmt. Inc., 2011 WL 1467239, at *1 n.2 (D. Me. Apr. 18, 2011).

Because the original petition is superseded by the amended complaint, the motion to dismiss the petition is moot. The disposition of the motion to dismiss is without prejudice as to any motions that may be filed to dismiss the amended complaint.

Conclusion

For the foregoing reasons, the defendant's motion to dismiss (document no. 5) is denied, without prejudice, as moot.

SO ORDERED.



Joseph A. DiClerico, Jr.
United States District Judge

May 9, 2013

cc: Peter G. Callaghan, Esquire
Janice M. Winnett, pro se